

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0413, State of New Hampshire v. Elaine Lavalette, the court on March 14, 2008, issued the following order:

The defendant, Elaine Lavalette, appeals her conviction for driving after revocation or suspension. She argues that the trial court erred in finding her guilty without finding a mens rea as to driving and/or in refusing to dismiss the complaint for failure to allege a mens rea. We reverse and remand.

The defendant was charged with a misdemeanor; specifically, RSA 263:64, IV (Supp. 2007) (person guilty of misdemeanor for driving motor vehicle in this state during period of suspension or revocation of her license or driving privilege for violation of RSA 265-A:2, I). A person is guilty of a misdemeanor only if she acts purposely, knowingly, recklessly or negligently, as the laws may require, with respect to each material element of the offense. RSA 626:2, I (2007). When the law defining an offense prescribes the kind of culpability that is sufficient for its commission, without distinguishing among the material elements thereof, such culpability shall apply to all the material elements, unless a contrary purpose plainly appears. *Id.* We have previously held that the State must prove a culpable mental state to convict a defendant of misdemeanor driving after suspension. See State v. Curran, 140 N.H. 530, 531-32 (1995). We see no reason to depart from that holding in this case.

In this case, the trial court ruled that the State did not need to prove that the defendant knowingly operated the motor vehicle. Because operating a motor vehicle is a material element of the charged misdemeanor offense and we have found no contrary legislative purpose to exempt this material element from the requirement that a culpable mental state be proved, the trial court's ruling was error. We therefore reverse and remand.

The defendant also argues that the trial court erred in refusing to dismiss the driving after revocation complaint because it failed to allege a mens rea. We note that, as a general rule, a complaint may be amended at any time before, during or after trial as long as the amendment does not prejudice the substantial rights of the defendant. State v. Anderson, 142 N.H. 918, 922 (1998). Because

we are reversing and remanding for further proceedings, however, we need not decide this issue.

Reversed and remanded.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**